



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,438	03/30/2001	Jonathan Edwards	2114P016	5694

8791 7590 10/22/2004

BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER

PYZOCHA, MICHAEL J

ART UNIT	PAPER NUMBER
----------	--------------

2137

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/823,438

Applicant(s)

EDWARDS ET AL.

Examiner

Michael Pyzocha

Art Unit

2137

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/17/2001
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-60 are pending.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-11, 14, 17, 19-29, 32, 35, 37-47, 50, 53, 55-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Chess et al (U.S. 6,560,632).

As per claims 1, 19 and 37, Chess et al discloses a method, apparatus and virus scanner for prioritizing virus scan requests comprising checking a virus scan request to determine if scanning an object of the request is necessary; and placing the virus scan request on a queue in a priority order based on a characteristic of the virus scan request (see column 3 lines 42-56).

Art Unit: 2137

As per claims 2, 20, and 38, Chess et al discloses selecting a one of the virus scan requests from the queue (see column 3 line 65 through column 4 line 5).

As per claims 3, 21, and 39, Chess et al discloses the selecting is based on the priority order (see column 3 line 47 through column 4 line 5).

As per claims 4, 22, and 40, Chess et al discloses the selecting is based on the characteristic of the virus scan request (see column 3 line 47 through column 4 line 5).

As per claims 5, 23, and 41, Chess et al discloses scanning the object of the selected virus scan request (see column 4 lines 6-13).

As per claims 6, 24, and 42, Chess et al discloses the characteristic includes at least one of an identity of the user triggering the virus scan request, a type of the process accessing the object of the virus scan request, a file extension of the object of the virus scan request, a time stamp of when the virus scan request was received, and an indication of whether the object is being accessed from a server console or from a network client (see column 3 lines 48-56).

As per claims 7, 25, and 43, Chess et al discloses the priority order is further based on comparing the characteristic of the virus scan request with the characteristics of the virus

Art Unit: 2137

scan requests previously placed on the queue (see column 3 lines 48-64).

As per claims 8, 26, and 44, Chess et al discloses the priority order is further based on a parameter indicating which of the compared characteristics is given higher priority (see column 3 lines 48-64).

As per claims 9, 27, and 45, Chess et al discloses the selecting is further based on comparing the characteristics of the virus scan requests placed in the queue (see column 3 line 48 through column 4 line 5).

As per claims 10, 28, and 46, Chess et al discloses the selecting is farther based on comparing the characteristics of the virus scan requests placed in the queue with the characteristics of the previously selected virus scan requests whose objects are currently being scanned (see column 4 lines 9-13).

As per claims 11, 29, and 47, Chess et al discloses the selecting is further based on a parameter indicating which of the compared characteristics is given higher priority (see column 4 lines 9-13).

As per claims 14, 32, and 50, Chess et al discloses the file extension of the selected scan request is an executable file as compared to a data file (see column 3 lines 42-56 where

Art Unit: 2137

it is inherent that the types of files which contain viruses, worms or Trojan Horses are executable and data files).

As per claims 17, 35, and 53, Chess et al discloses the scanning is necessary when a virus scan status indicates the object is not known to be virus free (see figure 3).

As per claim 55, Chess et al discloses a processor coupled to a system bus a memory coupled to the processor through the system bus a machine-accessible medium coupled to the processor through the system bus a virus scanning process executed from the machine-accessible medium by the processor (see column 1 lines 21-35 and column 3 lines 42-47 where it is inherent the computer systems described will have a processor coupled to a system bus, connecting memory and machine-accessible medium to the processor), wherein the virus scanning process causes the processor to check a virus scanning request to determine if scanning an object of the request is necessary, and if so to further place the checked virus scan request on a queue in a priority order based on a characteristic of the virus scan request (see column 3 lines 42-56).

As per claim 56, Chess et al discloses selecting a one of the virus scan requests from the queue (see column 3 line 65 through column 4 line 5).

Art Unit: 2137

As per claim 57, Chess et al discloses the selecting is based on the priority order (see column 3 line 47 through column 4 line 5).

As per claim 58, Chess et al discloses the selecting is based on the characteristic of the virus scan request (see column 3 line 47 through column 4 line 5).

As per claim 59, Chess et al discloses scanning the object of the selected virus scan request (see column 4 lines 6-13).

As per claim 60, Chess et al discloses the characteristic includes at least one of an identity of the user triggering the virus scan request, a type of the process accessing the object of the virus scan request, a file extension of the object of the virus scan request, a time stamp of when the virus scan request was received, and an indication of whether the object is being accessed from a server console or from a network client (see column 3 lines 48-56).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

Art Unit: 2137

the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 12-13, 15-16, 30-31, 33-34, 48-49, 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chess et al as applied to claims 6, 24, 42 above, and further in view of Cisco (webpage).

As per claims 12, 30, 48, Chess et al fails to disclose the user identity of the selected scan request is an administrator as compared to a regular user.

However, Cisco teaches the user identity of the selected scan request is an administrator as compared to a regular user (see top of page 6 where it is inherent that user information is included in the identity of the source system).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Cisco's method of prioritization in the prioritized system of Chess et al.

Motivation to do so would have been to allow a network manager to prioritize the messages (see Cisco top of page 6).

As per claims 13, 31, 49, the modified Chess et al and Cisco system discloses the process type of the selected scan request is an operating system as compared to a user application (see Cisco top of page 6).



As per claims 15, 33, 51, the modified Chess et al and Cisco system discloses the time stamp of the selected virus scan request is earlier as compared to the time stamps of each of the checked virus scan requests previously placed on the queue (see Cisco page 5 "First come First Served").

As per claims 16, 34, 52, the modified Chess et al and Cisco system discloses the indication of the selected virus scan request is that the object of the request is being accessed from a server console as compared to a network client (see Cisco top of page 6 where it is inherent that request location information is included in the identity of the source system).

6. Claims 18, 36, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chess et al as applied to claims 1, 19, 37 above, and further in view of McAfee (webpage).

As per claims 18, 36, and 54, Chess et al discloses scanning is necessary when the object of the virus scan request is in not excluded from virus scanning, but fails to disclose the object being a directory.

However, McAfee teaches scanning a directory when it is not excluded from virus scanning (see the bottom of page 8).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to apply Chess et al's method for virus scanning to a directory as taught in McAfee.

Art Unit: 2137

Motivation to do so would have been to allow the user to scan a particular directory (see McAfee bottom of page 6).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/823,438

Page 10

Art Unit: 2137

MJP

Andrew Cabell  
Andrew Cabell